

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated September 22, 2008 (hereinafter Office Action) have been considered. Claims 61 and 79 have been amended. Claims 98-104 have been added. After entry of this amendment, Claims 61-69, 71-73 and 75-93 and 98-104 will be pending in the application. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Claims 61-65, 67-86, 88 and 90-92 are rejected based on 35 U.S.C. §102(e) as being anticipated by U.S. Publication No. 2004/0002742 by Florio (hereinafter “Florio”).

The Applicant respectfully submits that the claims as previously presented are not anticipated by Florio. However, in order to facilitate prosecution of the application and in a *bona fide* attempt to advance the application to allowance, the Applicant presents this response with amendment to provide an enhanced appreciation of particular aspects of the claimed invention.

Independent claim 61 has been amended to include elements from now canceled claims 70 and 74. For example, claim 61 is amended to further explain the therapy control system as comprising circuitry configured to assess therapy efficacy, circuitry configured to assess an impact of the therapy on a patient and wherein the therapy control system is configured to adapt the cardiac electrical therapy to promote therapy efficacy and adapt the cardiac electrical therapy to reduce an impact of the therapy on the patient. No new matter has been added.

To anticipate a claim, the asserted reference must clearly and unequivocally disclose every element of the claimed invention. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. All claim elements, and their limitations, must be found in the prior art reference to maintain a rejection based on 35 U.S.C. §102.

The Applicant respectfully asserts that independent claim 61 is not anticipated by Florio. For example, the Applicant’s claim 61 discusses a therapy control system to adapt electrical therapy to reduce an impact of the therapy on the patient. Nowhere does Florio

discuss reducing the impact of the therapy on the patient. Because Florio does not teach all of the elements of Applicant's claim 61, this claim is not anticipated by Florio and is in condition for allowance over the cited reference.

Claims 66, 87, 89 and 93 are rejected based on 35 U.S.C. §103(a) as being unpatentable over Florio as applied to claim 61.

Applicant reasserts the arguments made in connection with the §102(e) rejection above. Florio cannot support an obviousness rejection of the claims at least for the reason that all the claim elements are not described or suggested by the asserted combination.

Dependent claims 62-69, 71-73 and 75-93, which are dependent from independent claim 61, were also rejected under 35 U.S.C. §102(e) as being unpatentable over Florio. While Applicant does not acquiesce with the particular rejections to these dependent claims, it is believed that these rejections are now moot in view of the remarks made in connection with independent claim 61. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional features which further distinguish these claims from the cited references. Therefore, dependent claims 62-69, 71-73 and 75-93 are also in condition for allowance.

Finally, Applicant notes the addition of independent claim 98 and dependent claims 99-104. Independent claim 98 includes, for example, a therapy control system with circuitry configured to assess a negative impact of the therapy on the patient wherein the therapy control system is configured to adapt the cardiac electrical therapy to reduce the negative impact of the therapy on the patient. No new matter has been added.

The Applicant further asserts that Florio never discusses assessing a negative impact of therapy on the patient and adapting the cardiac electrical therapy to reduce the negative impact of the therapy on the patient. Thus, Florio does not anticipate or render obvious new claims 98-104. Consideration and allowance of claims 98-104 is therefore respectfully solicited.

It is to be understood that the Applicant does not acquiesce to the Examiner's characterization of the asserted art or the Applicant's claimed subject matter, nor of the Examiner's application of the asserted art to the Applicant's claimed subject matter.

Moreover, the Applicant does not acquiesce to any explicit or implicit statements or conclusions by the Examiner concerning what would have been known to one of ordinary skill in the art, what is Applicant's prior art, officially noticed facts, and the like. The Applicant respectfully submits that a detailed discussion of each of the Examiner's rejections beyond that provided above is not necessary, in view of the clear absence of teaching of various features recited in the Applicant's pending claims. The Applicant, however, reserves the right to address in detail the Examiner's characterizations, conclusions, and rejections in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (GUID.059PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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Date: 12/22/2008

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